

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

CHAPTER 114

HOUSE BILL 2405

AN ACT

AMENDING SECTION 13-105, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-709.06; AMENDING TITLE 13, CHAPTER 23, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-2323; RELATING TO HUMAN SMUGGLING ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-105, Arizona Revised Statutes, is amended to
3 read:

4 13-105. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Absconder" means a probationer who has moved from the
7 probationer's primary residence without permission of the probation officer,
8 who cannot be located within ninety days of the previous contact and against
9 whom a petition to revoke has been filed in the superior court alleging that
10 the probationer's whereabouts are unknown. A probationer is no longer deemed
11 an absconder when the probationer is voluntarily or involuntarily returned to
12 probation service.

13 2. "Act" means a bodily movement.

14 3. "Benefit" means anything of value or advantage, present or
15 prospective.

16 4. "Calendar year" means three hundred sixty-five days' actual time
17 served without release, suspension or commutation of sentence, probation,
18 pardon or parole, work furlough or release from confinement on any other
19 basis.

20 5. "Community supervision" means that portion of a felony sentence
21 that is imposed by the court pursuant to section 13-603, subsection I and
22 that is served in the community after completing a period of imprisonment or
23 served in prison in accordance with section 41-1604.07.

24 6. "Conduct" means an act or omission and its accompanying culpable
25 mental state.

26 7. "Crime" means a misdemeanor or a felony.

27 8. "Criminal street gang" means an ongoing formal or informal
28 association of persons in which members or associates individually or
29 collectively engage in the commission, attempted commission, facilitation or
30 solicitation of any felony act and that has at least one individual who is a
31 criminal street gang member.

32 9. "Criminal street gang member" means an individual to whom at least
33 two of the following seven criteria that indicate criminal street gang
34 membership apply:

35 (a) Self-proclamation.

36 (b) Witness testimony or official statement.

37 (c) Written or electronic correspondence.

38 (d) Paraphernalia or photographs.

39 (e) Tattoos.

40 (f) Clothing or colors.

41 (g) Any other indicia of street gang membership.

42 10. "Culpable mental state" means intentionally, knowingly, recklessly
43 or with criminal negligence as those terms are defined in this paragraph:

1 (a) "Intentionally" or "with the intent to" means, with respect to a
2 result or to conduct described by a statute defining an offense, that a
3 person's objective is to cause that result or to engage in that conduct.

4 (b) "Knowingly" means, with respect to conduct or to a circumstance
5 described by a statute defining an offense, that a person is aware or
6 believes that the person's conduct is of that nature or that the circumstance
7 exists. It does not require any knowledge of the unlawfulness of the act or
8 omission.

9 (c) "Recklessly" means, with respect to a result or to a circumstance
10 described by a statute defining an offense, that a person is aware of and
11 consciously disregards a substantial and unjustifiable risk that the result
12 will occur or that the circumstance exists. The risk must be of such nature
13 and degree that disregard of such risk constitutes a gross deviation from the
14 standard of conduct that a reasonable person would observe in the situation.
15 A person who creates such a risk but who is unaware of such risk solely by
16 reason of voluntary intoxication also acts recklessly with respect to such
17 risk.

18 (d) "Criminal negligence" means, with respect to a result or to a
19 circumstance described by a statute defining an offense, that a person fails
20 to perceive a substantial and unjustifiable risk that the result will occur
21 or that the circumstance exists. The risk must be of such nature and degree
22 that the failure to perceive it constitutes a gross deviation from the
23 standard of care that a reasonable person would observe in the situation.

24 11. "Dangerous drug" means dangerous drug as defined in section
25 13-3401.

26 12. "Dangerous instrument" means anything that under the circumstances
27 in which it is used, attempted to be used or threatened to be used is readily
28 capable of causing death or serious physical injury.

29 13. "Dangerous offense" means an offense involving the discharge, use
30 or threatening exhibition of a deadly weapon or dangerous instrument or the
31 intentional or knowing infliction of serious physical injury on another
32 person.

33 14. "Deadly physical force" means force that is used with the purpose
34 of causing death or serious physical injury or in the manner of its use or
35 intended use is capable of creating a substantial risk of causing death or
36 serious physical injury.

37 15. "Deadly weapon" means anything designed for lethal use, including a
38 firearm.

39 16. "Economic loss" means any loss incurred by a person as a result of
40 the commission of an offense. Economic loss includes lost interest, lost
41 earnings and other losses that would not have been incurred but for the
42 offense. Economic loss does not include losses incurred by the convicted
43 person, damages for pain and suffering, punitive damages or consequential
44 damages.

1 17. "Enterprise" includes any corporation, association, labor union or
2 other legal entity.

3 18. "Felony" means an offense for which a sentence to a term of
4 imprisonment in the custody of the state department of corrections is
5 authorized by any law of this state.

6 19. "Firearm" means any loaded or unloaded handgun, pistol, revolver,
7 rifle, shotgun or other weapon that will or is designed to or may readily be
8 converted to expel a projectile by the action of expanding gases, except that
9 it does not include a firearm in permanently inoperable condition.

10 20. "Government" means the state, any political subdivision of the
11 state or any department, agency, board, commission, institution or
12 governmental instrumentality of or within the state or political subdivision.

13 21. "Government function" means any activity that a public servant is
14 legally authorized to undertake on behalf of a government.

15 22. "Historical prior felony conviction" means:

16 (a) Any prior felony conviction for which the offense of conviction
17 either:

18 (i) Mandated a term of imprisonment except for a violation of chapter
19 34 of this title involving a drug below the threshold amount.

20 (ii) Involved the intentional or knowing infliction of serious
21 physical injury.

22 (iii) Involved the use or exhibition of a deadly weapon or dangerous
23 instrument.

24 (iv) Involved the illegal control of a criminal enterprise.

25 (v) Involved aggravated driving under the influence of intoxicating
26 liquor or drugs.

27 (vi) Involved any dangerous crime against children as defined in
28 section 13-705.

29 (b) Any class 2 or 3 felony, except the offenses listed in subdivision
30 (a) of this paragraph, that was committed within the ten years immediately
31 preceding the date of the present offense. Any time spent on absconder
32 status while on probation, on escape status or incarcerated is excluded in
33 calculating if the offense was committed within the preceding ten years. If
34 a court determines a person was not on absconder status while on probation or
35 escape status, that time is not excluded. For the purposes of this
36 subdivision, "escape" means:

37 (i) A departure from custody or from a juvenile secure care facility,
38 a juvenile detention facility or an adult correctional facility in which the
39 person is held or detained, with knowledge that the departure is not
40 permitted, or the failure to return to custody or detention following a
41 temporary leave granted for a specific purpose or for a limited period.

42 (ii) A failure to report as ordered to custody or detention to begin
43 serving a term of incarceration.

44 (c) Any class 4, 5 or 6 felony, except the offenses listed in
45 subdivision (a) of this paragraph, that was committed within the five years

1 immediately preceding the date of the present offense. Any time spent on
2 absconder status while on probation, on escape status or incarcerated is
3 excluded in calculating if the offense was committed within the preceding
4 five years. If a court determines a person was not on absconder status while
5 on probation or escape status, that time is not excluded. For the purposes
6 of this subdivision, "escape" has the same meaning prescribed in subdivision
7 (b) of this paragraph.

8 (d) Any felony conviction that is a third or more prior felony
9 conviction.

10 23. "HUMAN SMUGGLING ORGANIZATION" MEANS AN ONGOING FORMAL OR INFORMAL
11 ASSOCIATION OF PERSONS IN WHICH MEMBERS OR ASSOCIATES INDIVIDUALLY OR
12 COLLECTIVELY ENGAGE IN THE SMUGGLING OF HUMAN BEINGS.

13 ~~23.~~ 24. "Intoxication" means any mental or physical incapacity
14 resulting from use of drugs, toxic vapors or intoxicating liquors.

15 ~~24.~~ 25. "Misdemeanor" means an offense for which a sentence to a term
16 of imprisonment other than to the custody of the state department of
17 corrections is authorized by any law of this state.

18 ~~25.~~ 26. "Narcotic drug" means narcotic drugs as defined in section
19 13-3401.

20 ~~26.~~ 27. "Offense" or "public offense" means conduct for which a
21 sentence to a term of imprisonment or of a fine is provided by any law of the
22 state in which it occurred or by any law, regulation or ordinance of a
23 political subdivision of that state and, if the act occurred in a state other
24 than this state, it would be so punishable under the laws, regulations or
25 ordinances of this state or of a political subdivision of this state if the
26 act had occurred in this state.

27 ~~27.~~ 28. "Omission" means the failure to perform an act as to which a
28 duty of performance is imposed by law.

29 ~~28.~~ 29. "Peace officer" means any person vested by law with a duty to
30 maintain public order and make arrests and includes a constable.

31 ~~29.~~ 30. "Person" means a human being and, as the context requires, an
32 enterprise, a public or private corporation, an unincorporated association, a
33 partnership, a firm, a society, a government, a governmental authority or an
34 individual or entity capable of holding a legal or beneficial interest in
35 property.

36 ~~30.~~ 31. "Petty offense" means an offense for which a sentence of a
37 fine only is authorized by law.

38 ~~31.~~ 32. "Physical force" means force used upon or directed toward the
39 body of another person and includes confinement, but does not include deadly
40 physical force.

41 ~~32.~~ 33. "Physical injury" means the impairment of physical condition.

42 ~~33.~~ 34. "Possess" means knowingly to have physical possession or
43 otherwise to exercise dominion or control over property.

44 ~~34.~~ 35. "Possession" means a voluntary act if the defendant knowingly
45 exercised dominion or control over property.

~~36-~~ 37. "Property" means anything of value, tangible or intangible.

~~37.~~ 38. "Public servant":

(a) Means any officer or employee of any branch of government, whether elected, appointed or otherwise employed, including a peace officer, and any person participating as an advisor or consultant or otherwise in performing a governmental function.

(b) Does not include jurors or witnesses.

(c) Includes those who have been elected, appointed, employed or designated to become a public servant although not yet occupying that position.

~~38.~~ 39. "Serious physical injury" includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

39. 40. "Unlawful" means contrary to law or, where the context so requires, not permitted by law.

40- 41. "Vehicle" means a device in, upon or by which any person or property is, may be or could have been transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

41- 42. "Voluntary act" means a bodily movement performed consciously and as a result of effort and determination.

42- 43. "Voluntary intoxication" means intoxication caused by the knowing use of drugs, toxic vapors or intoxicating liquors by a person, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces them pursuant to medical advice or under such duress as would afford a defense to an offense.

Sec. 2. Title 13, chapter 7, Arizona Revised Statutes, is amended by adding section 13-709.06, to read:

13-709.06. Special sentencing provisions: human smuggling organization

A PERSON WHO IS CONVICTED OF COMMITTING ANY FELONY OFFENSE WITH THE INTENT TO PROMOTE, FURTHER OR ASSIST A HUMAN SMUGGLING ORGANIZATION THAT

OPERATES FOR THE GOAL OR PURPOSE OF HUMAN TRAFFICKING OR HUMAN SMUGGLING
SHALL NOT BE ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON OR

RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS AUTHORIZED BY SECTION 31-233,
SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED,

THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS COMMUTED. THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCE FOR THE OFFENSE SHALL BE INCREASED BY THREE YEARS IF THE OFFENSE IS A CLASS 4, 5 OR 6 FELONY OR SHALL BE INCREASED BY FIVE YEARS IF THE OFFENSE IS A CLASS 2 OR 3

1 FELONY. THE ADDITIONAL SENTENCE IMPOSED PURSUANT TO THIS SECTION IS IN
2 ADDITION TO ANY ENHANCED SENTENCE THAT MAY BE APPLICABLE.

3 Sec. 3. Title 13, chapter 23, Arizona Revised Statutes, is amended by
4 adding section 13-2323, to read:

5 13-2323. Participating in or assisting a human smuggling
6 organization; classification

7 A. A PERSON COMMITS PARTICIPATING IN A HUMAN SMUGGLING ORGANIZATION BY
8 ANY OF THE FOLLOWING:

9 1. INTENTIONALLY ORGANIZING, MANAGING, DIRECTING, SUPERVISING OR
10 FINANCING A HUMAN SMUGGLING ORGANIZATION WITH THE INTENT TO PROMOTE OR
11 FURTHER THE CRIMINAL OBJECTIVES OF THE HUMAN SMUGGLING ORGANIZATION.

12 2. KNOWINGLY DIRECTING OR INSTRUCTING OTHERS TO ENGAGE IN VIOLENCE OR
13 INTIMIDATION TO PROMOTE OR FURTHER THE CRIMINAL OBJECTIVES OF A HUMAN
14 SMUGGLING ORGANIZATION.

15 3. FURNISHING ADVICE OR DIRECTION IN THE CONDUCT, FINANCING OR
16 MANAGEMENT OF A HUMAN SMUGGLING ORGANIZATION'S AFFAIRS WITH THE INTENT TO
17 PROMOTE OR FURTHER THE CRIMINAL OBJECTIVES OF A HUMAN SMUGGLING ORGANIZATION.

18 4. INTENTIONALLY PROMOTING OR FURTHERING THE CRIMINAL OBJECTIVES OF A
19 HUMAN SMUGGLING ORGANIZATION BY INDUCING OR COMMITTING ANY ACT OR OMISSION BY
20 A PUBLIC SERVANT IN VIOLATION OF THE PUBLIC SERVANT'S OFFICIAL DUTY.

21 B. A PERSON COMMITS ASSISTING A HUMAN SMUGGLING ORGANIZATION BY
22 COMMITTING ANY FELONY OFFENSE, WHETHER COMPLETED OR PREPARATORY, AT THE
23 DIRECTION OF OR IN ASSOCIATION WITH ANY HUMAN SMUGGLING ORGANIZATION.

24 C. PARTICIPATING IN A HUMAN SMUGGLING ORGANIZATION IS A CLASS 2
25 FELONY.

26 D. ASSISTING A HUMAN SMUGGLING ORGANIZATION IS A CLASS 3 FELONY.

APPROVED BY THE GOVERNOR APRIL 14, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2011.

Passed the House March 3, 2011

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting

[Signature]
Speaker of the House

Cheryl Laube
Chief Clerk of the House

Passed the Senate April 7, 2011

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

[Signature]
President of the Senate

Armenis Billegan
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

11 day of April, 2011

at 2:40 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 14th day of

April

at 4:42 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 14th day of April, 2011

at 5:07 o'clock P. M.

[Signature]
Secretary of State

H.B. 2405